



**Billing Code 7510-13**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1801, 1802, 1805, 1807, 1812, 1813, 1823, 1833, 1836, 1847, 1850 and 1852**

**RIN 2700-AE19**

**NASA FAR Supplement Regulatory Review No. 3**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA adopts a final rule amending the NASA FAR Supplement with the goal of eliminating unnecessary regulation, streamlining burdensome regulation, clarifying language, and simplifying processes where possible.

**DATE:** Effective: [Insert date 30 days after publication in the **FEDERAL REGISTER**.]

**FOR FURTHER INFORMATION CONTACT:** Manuel Quinones, NASA, Office of Procurement, Contract and Grant Policy Division, e-mail: [manuel.quinones@nasa.gov](mailto:manuel.quinones@nasa.gov) or telephone (202) 358-2143.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

NASA issued a proposed rule in the **Federal Register** at 80 FR 18580 on April 7, 2015, as part of a periodic, comprehensive review and analysis, to make updates and corrections, and reissue the NASA FAR Supplement (NFS). The last reissue of the NFS was in 2004. The goal of the review and analysis is to reduce regulatory burden where justified and appropriate and make the NFS content and processes more efficient, effective, and easier to comprehend, in support of

NASA's mission. Consistent with Executive Order (E.O.) 13563, Improving Regulations and Regulatory Review, NASA reviewed and revised the NFS with an emphasis on streamlining it and reducing associated regulatory burdens to the public. Due to the volume of the NFS, these revisions were being made in increments. This rule is the third and final increment and marks completion of the 2015 version of the NFS.

## **II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a "significant regulatory action" under section 3(f) of E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

## **III. Regulatory Flexibility Act**

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it mainly clarifies or updates existing regulations. In several instances, this rule deletes existing requirements which eases the regulatory burden on all entities, minimizing the number of resources used to collect the data and report it to the government.

## **IV. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the NFS do not impose additional information collection requirements to the paperwork burden

previously approved under OMB Control Number 2700-0089, titled Reports Requested for Contracts with an Estimated Value Greater Than \$500,000.

**List of Subjects in 48 CFR 1801, 1802, 1805, 1807, 1812, 1813, 1823, 1833, 1836, 1847, 1850 and 1852.**

Government procurement.

**Cynthia Boots,**

Alternate Federal Register Liaison

Accordingly, 48 CFR Parts 1801, 1802, 1805, 1807, 1812, 1813, 1823, 1833, 1836, 1847, 1850, and 1852 are amended as follows:

**PART 1801--FEDERAL ACQUISITION REGULATIONS SYSTEM**

1. The authority citation for part 1801 is revised to read as follows:

**Authority:** 51 U.S.C. 20113(a).

**1801.106 [Amended]**

2. Section 1801.106 is revised to read as follows:

**1801.106 OMB approval under the Paperwork Reduction Act.**

(1) *NFS requirements.* The following OMB control numbers apply:

<b>NFS</b>	<b>Segment</b>	<b>OMB Control Number</b>
	1823	2700-0089
	1827	2700-0052
	1843	2700-0054
	NF 533	2700-0003
	NF 1018	2700-0017

## **PART 1802—DEFINITIONS**

3. The authority citation for part 1802 is revised to read as follows:

**Authority:** 51 U.S.C. 20113(a).

### **1802.101 [Amended]**

4. In section 1802.101, the definition for “Head of the contracting activity (HCA)” is revised to read as follows:

#### **1802.101 Definitions.**

\* \* \* \* \*

*Head of the contracting activity (HCA)* means, for field installations, the Director or other head, and for NASA Headquarters, the Director for Headquarters Operations. For Human Exploration and Operations Mission Directorate (HEOMD) contracts, the HCA is the Associate Administrator for HEOMD in lieu of the field Center Director(s). For NASA Shared Services Center (NSSC) contracts, the HCA is the Executive Director of the NSSC in lieu of the field Center Director(s).

\* \* \* \* \*

## **PART 1805 –PUBLICIZING CONTRACT ACTIONS**

5. The authority citation for part 1805 is revised to read as follows:

**Authority:** 51 U.S.C. 20113(a).

### **1805.303 [Amended]**

6. Section 1805.303 is revised to read as follows:

#### **1805.303 Announcement of contract awards.**

(a)(i) In lieu of the threshold cited in FAR 5.303(a), a NASA Headquarters public announcement is required for award of contract actions that have a total anticipated value, including unexercised options, of \$5 million or greater.

## **PART 1807—ACQUISITION PLANNING**

7. The authority citation for part 1807 is revised to read as follows:

**Authority:** 51 U.S.C. 20113(a).

### **Subpart 1807.1 [Removed]**

8. Subpart 1807.1, consisting of sections 1807.107 and 1807.107-70, is removed.

### **1807.7200 [Amended]**

9. In section 1807.7200, paragraph (b) is revised to read as follows:

#### **1807.7200 Policy.**

\* \* \* \* \*

(b) The annual forecast and semiannual update are available on the NASA Acquisition Internet Service (<http://www.hq.nasa.gov/office/procurement/forecast/index.html>).

10. In section 1807.7201, the definition for “Contract opportunity” is revised to read as follows:

#### **1807.7201 Definitions.**

\* \* \* \* \*

*Contract opportunity* means planned new contract awards exceeding the simplified acquisition threshold (SAT).

## **PART 1812—ACQUISITION OF COMMERCIAL ITEMS**

11. The authority citation for part 1812 is revised to read as follows:

**Authority:** 51 U.S.C. 20113(a).

12. Section 1812.301 is revised to read as follows:

**1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f)(i) The following clauses are authorized for use in acquisitions of commercial items when required by the clause prescription:

(A) 1852.204-75, Security Classification Requirements.

(B) 1852.204-76, Security Requirements for Unclassified Information Technology

Resources.

(C) 1852.215-84, Ombudsman.

(D) 1852.216-80, Task Order Procedures (Alternate I).

(E) 1852.216-88, Performance Incentive.

(F) 1852.219-73, Small Business Subcontracting Plan.

(G) 1852.219-75, Small Business Subcontracting Reporting.

(H) 1852.223-70, Safety and Health.

(I) 1852.223-71, Frequency Authorization.

(J) 1852.223-72, Safety and Health (Short Form).

(K) 1852.223-73, Safety and Health Plan.

(L) 1852.223-75, Major Breach of Safety and Security (Alternate I).

(M) 1852.225-70, Export Licenses.

(N) 1852.228-76, Cross-Waiver of Liability for International Space Station Activities.

(O) 1852.228-78, Cross-Waiver of Liability for Science or Space Exploration Activities

Unrelated to the International Space Station.

(P) 1852.237-70, Emergency Evacuation Procedures.

(Q) 1852.237-72, Access to Sensitive Information.

(R) 1852.237-73, Release of Sensitive Information.

(S) 1852.246-72, Material Inspection and Receiving Report.

(T) 1852.247.71, Protection of the Florida Manatee.

13. In section 1812.7000:

- a. Paragraph (d) is removed;
- b. Paragraphs (a), (b), and (c) are redesignated as paragraph (b), (c) (d) respectively; and
- c. Paragraph (a) is added.

The addition reads as follows:

**1812.7000 Anchor tenancy contracts.**

(a) The term “anchor tenancy” means an arrangement in which the United States Government agrees to procure sufficient quantities of a commercial space product or service needed to meet Government mission requirements so that a commercial venture is made viable.

\* \* \* \* \*

**PART 1813—SIMPLIFIED ACQUISITION PROCEDURES**

14. The authority citation for part 1813 is revised to read as follows:

**Authority:** 51 U.S.C. 20113(a).

**1813.000 [Removed]**

15. Section 1813.000 is removed.

**PART 1823 –ENVIRONMENT, ENERGY, AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

16. The authority citation for part 1823 is revised to read as follows:

**Authority:** 51 U.S.C. 20113(a).

17. In section 1823.7001:

- a. Paragraph (c) is revised;
- b. Paragraphs (d) and (e) are redesignated as paragraphs (e), and (f) respectively, and newly redesignated paragraph (f) is revised; and
- c. Paragraph (d) is added.

The revisions and additions read as follows:

**1823.7001 NASA solicitation provisions and contract clauses.**

\* \* \* \* \*

(c) The contracting officer shall insert the clause at 1852.223-73, Safety and Health Plan, in solicitations above the simplified acquisition threshold when the work will be conducted completely or partly on a Federally-controlled facility and the safety and health plan will be evaluated in source selection as approved by the source selection authority. This clause may be modified to identify specific information that is to be included in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall incorporate the plan as an attachment into any resulting contract. The contracting officer shall insert the clause, with its Alternate I, in Invitations for Bid.

(d)(1) The contracting officer shall insert FAR clause at 52.236-13 with its Alternate I in solicitations and contracts when the work will be conducted completely or partly on a Federally-controlled facility and a Safety and Health Plan will be reviewed after award as a contract deliverable. The contracting officer may modify the wording in paragraph (f) of Alternate I to specify:

- (i) When the proposed plan is due and



- (ii) Whether the contractor may commence work prior to approval of the plan; or
  - (iii) To what extent the contractor may commence work before the plan is approved.
- (2) The requiring activity, in consultation with the cognizant health and safety official(s), will identify the data deliverable requirements for the safety and health plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall incorporate the plan as an attachment into the contract.

\* \* \* \* \*

- (f) The contracting officer shall insert the clause at 1852.223-72, Safety and Health (Short Form) in solicitations and contracts above the simplified acquisition threshold when work will be conducted completely or partly on Federally-controlled facilities and that do not contain the clause at 1852.223-73 or the FAR clause at 52.236-13 with its Alternate I.

## **PART 1833—PROTESTS, DISPUTES, AND APPEALS**

18. The authority citation for part 1833 is revised to read as follows:

**Authority:** 51 U.S.C. 20113(a).

### **1833.103 [Amended]**

19. Section 1833.103 is revised to read as follows:

#### **1833.103 Protests to the agency.**

(d)(4) The provision at 1852.233-70 provides for an alternative to a protest to the United States Government Accountability Office (GAO). This alternative gives bidders or offerors the ability to protest directly to the contracting officer (CO) or to request an independent review by the Assistant Administrator for Procurement (or designee). The Agency review shall be deemed to be at the CO level when the request is silent as to the level of review desired. The Agency review shall be deemed to be at the level of the Assistant Administrator for Procurement (or

designee) when the request specifies a level above the CO, even if the request does not specifically request an independent review by the Assistant Administrator for Procurement. Such reviews are separate and distinct from the Ombudsman Program described at 1815.7001.

(e) NASA shall summarily dismiss and take no further action upon any protest to the Agency if the substance of the protest is pending in judicial proceedings or the protester has filed a protest on the same acquisition with the GAO prior to receipt of an Agency protest decision.

(4) When a bidder or offeror submits an Agency protest to the CO or alternatively requests an independent review by the Assistant Administrator for Procurement, the decision of the CO or the Assistant Administrator for Procurement shall be final and is not subject to any appeal or reconsideration within NASA.

#### **1833.106-70 [Amended]**

20. In section 1833.106-70, remove the words “Contracting officers” and add in their place the words “The contracting officer”.

#### **1833.215 [Amended]**

21. In section 1833.215, remove the word “agency” and add in its place the word “Agency”.

### **PART 1836 – CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

22. The authority citation for part 1836 is revised to read as follows:

**Authority:** 51 U.S.C. 20113(a).

23. Section 1836.513 is revised to read as follows:

#### **1836.513 Accident prevention.**

For additional guidance on the use of FAR clause 52.236-13, Accident Prevention, and its Alternate I in NASA contracts, see 1823.7001(d).

**PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY  
ACT**

24. The authority citation for part 1850 is added to read as follows:

**Authority:** 51 U.S.C. 20113(a).

**1850.103-570 [Amended]**

25. In the introductory text of paragraph (a) to section 1850.103-570, remove the words “Associate General Counsel for General Law” and add in their place the words “Associate General Counsel for Contracts and Procurement Law”.

**1850.103-670 [Amended]**

26. In paragraph (b) to section 1850.103-670, remove the words “Associate General Counsel for General Law” and add in their place the words “Associate General Counsel for Contracts and Procurement Law”.

**1850.104-2 [Added]**

27. Section 1850.104-2 is added to read as follows:

**1850.104-2 General**

(a) Requests for the exercise of residual powers shall be sent to the Headquarters Office of Procurement, Program Operations Division for review and processing. The NASA Administrator is the approval authority for the Memorandum of Decision.

28. Section 1850.104-3 is revised to read as follows:

**1850.104-3 Special procedures for unusually hazardous or nuclear risks.**

(a) Indemnification requests. (1) Contractor indemnification requests must be submitted to the cognizant contracting officer for the contract for which the indemnification clause is requested. The request shall be submitted six (6) months in advance of the desired effective date of the

requested indemnification in order to allow sufficient time for the request to be reviewed, analyzed, and approved by the Agency. Contractors shall submit a single request and shall ensure that duplicate requests are not submitted by associated divisions, subsidiaries, or central offices of the contractor.

(ii) The contractor's request for indemnification must identify a sufficient factual basis for indemnification by explaining specifically what work activities under the contract create the unusually hazardous or nuclear risk and identifying the timeframes in which the risk would be incurred.

(iii) The contractor shall also provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.

(b) Action on indemnification requests. (1) If recommending approval, the contracting officer shall forward the required information to the NASA Headquarters Office of Procurement, Program Operations Division, along with the following:

(i) For contracts of five years duration or longer, a determination, with supporting rationale, whether the indemnification approval and insurance coverage and premiums should be reviewed for adequacy and continued validity at points in time within the extended contract period.

(ii) The specific definition of the unusually hazardous risk to which the contractor is exposed in the performance of the contract(s), including specificity about which activities present such risk and the anticipated timeframes in which the risk will be incurred;

(iv) A complete discussion of the contractor's financial protection program; and

(vi) The extent to, and conditions under, which indemnification is being approved for subcontracts.

(2) The NASA Administrator is the approval authority for using the indemnification clause in a contract by a Memorandum of Decision.

(4)(ii) If approving subcontractor indemnification, the contracting officer shall document the file with a memorandum for record addressing the items set forth in FAR 50.104-3(b) and include an analysis of the subcontractor's financial protection program. In performing this analysis, the contracting officer shall take into consideration the availability, cost, terms and conditions of insurance in relation to the unusually hazardous risk.

29. Section 1850.104-4 is added to read as follows:

**1850.104-4 Contract clause.**

The contracting officer shall obtain the NASA Administrator's approval prior to including clause 52.250-1 in a contract.

**1850.104-70 [Removed]**

30. Section 1850.104-70 is removed.

**PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

31. The authority citation for part 1852 is revised to read as follows:

**Authority:** 51 U.S.C. 20113(a).

**1852.223-72 and 1852.223-73 [Amended]**

32. Sections 1852.223-72 and 1852.223-73 are revised to read as follows:

**1852.223-72 Safety and Health (Short Form).**

As prescribed in 1823.7001(f), insert the following clause:

**SAFETY AND HEALTH (SHORT FORM)**

[Insert Abbreviated Month and Year of Date 30 days after publication in the FEDERAL REGISTER]

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness; damage to or loss of equipment or property, or damage to the environment. NASA is committed to protecting the safety and health of the public, our team members, and those assets that the Nation entrusts to the Agency.

(b) The Contractor shall have a documented, comprehensive and effective health and safety program with a proactive process to identify, assess, and control hazards and take all reasonable safety and occupational health measures consistent with standard industry practice in performing this contract.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c) in subcontracts that exceed the simplified acquisition threshold where work will be conducted completely or partly on Federally-controlled facilities.

(End of clause)

#### **1852.223-73 Safety and Health Plan.**

As prescribed in 1823.7001(c), insert the following clause:

#### **SAFETY AND HEALTH PLAN**

**[Insert Abbreviated Month and Year of Date 30 days after publication in the FEDERAL REGISTER]**

(a) The offeror shall submit a detailed safety and occupational health plan as part of its proposal. The plan shall include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of Contractor employees and to ensure the safety of all working conditions throughout the performance of the contract.

(b) The plan shall similarly address subcontractor employee safety and occupational health for those proposed subcontracts or subcontract effort where the work will be conducted completely or partly on a Federally-controlled facility

(d) This plan, as approved by the Contracting Officer, will be incorporated into any resulting contract.

(End of clause)

### **ALTERNATE I**

**(Insert Abbreviated Month and Year of Date 30 days after publication in the FEDERAL REGISTER)**

As prescribed in 1823.7001(c)(1), delete the first sentence in paragraph (a) of the basic provision and substitute the following:

The apparent low bidder, upon request by the Contracting Officer, shall submit a detailed safety and occupational health plan. The plan shall be submitted within the time specified by the Contracting Officer. Failure to submit an acceptable plan shall make the bidder ineligible for the award of a contract.

33. Section 1852.233-70 is revised to read as follows:

#### **1852.233-70 Protests to NASA.**

As prescribed in 1833.106-70, insert the following provision:

### **PROTESTS TO NASA**

**[Insert Abbreviated Month and Year of Date 30 days after publication in the FEDERAL REGISTER]**

(a) In lieu of a protest to the United States Government Accountability Office (GAO), bidders or offerors may submit a protest under 48 CFR Part 33 (FAR Part 33) directly to the Contracting

Officer for consideration by the Agency. Alternatively, bidders or offerors may request an independent review by the Assistant Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review. Such reviews are separate and distinct from the Ombudsman Program described at 1815.7001.

(b) Bidders or offerors shall specify whether they are submitting a protest to the Contracting Officer or requesting an independent review by the Assistant Administrator for Procurement.

(c) Protests to the Contracting Officer shall be submitted to the address or email specified in the solicitation (email is an acceptable means for submitting a protest to the Contracting Officer).

Alternatively, requests for independent review by the Assistant Administrator for Procurement shall be addressed to the Assistant Administrator for Procurement, NASA Headquarters, Washington, DC 20456-0001.

(End of provision)

34. Section 1852.247-71 is revised to read as follows:

**1852.247–71 Protection of the Florida Manatee.**

As prescribed in 1847.7001, insert the following clause:

**PROTECTION OF THE FLORIDA MANATEE**

**(Insert Abbreviated Month and Year of Date 30 days after publication in the FEDERAL REGISTER)**

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93–205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92–522), the Florida Manatee (*Trichechus Manatus*) has been designated an endangered species, and the Indian River Lagoon system within and adjacent to National Aeronautics and Space Administration’s (NASA’s) Kennedy Space Center (KSC) has been designated as a critical habitat of the Florida Manatee. The KSC



Environmental Management Branch will advise all personnel associated with the project of the potential presence of manatees in the work area, and the need to avoid collisions and/or harassment of the manatees. Contractors shall ensure that all employees, subcontractors, and other individuals associated with this contract and who are involved in vessel operations, dockside work, and selected disassembly functions are aware of the civil and criminal penalties for harming, harassing, or killing manatees.

(b) All contractor personnel shall be responsible for complying with all applicable Federal and/or state permits (*e.g.*, Florida Department of Environmental Protection, St. Johns River Water Management District, Fish & Wildlife Service) in performing water-related activities within the contract. Where no Federal and/or state permits are required for said contract, and the contract scope requires activities within waters at KSC, the Contractor shall obtain a KSC Manatee Protection Permit from the Environmental Management Branch. All conditions of Federal, state, and/or KSC regulations and permits for manatee protection shall be binding to the contract. Notification and coordination of all water related activities at KSC will be done through the Environmental Management Branch.

(c) The Contractor shall incorporate the provisions of this clause in applicable subcontracts.

(End of clause)

[FR Doc. 2015-15524 Filed: 6/25/2015 08:45 am; Publication Date: 6/26/2015]